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September 30, 2008

Phil Isenberg, Chair
Delta Vision Blue Ribbon Task Force
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Delta Vision Strategic Plan – Fourth Draft Dated September 12, 2008

Dear Chair Isenberg:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC), I am pleased to submit for your consideration comments on the Fourth Draft Delta Vision Strategic Plan (Strategic Plan) dated September 12, 2008.

This latest version of the Strategic Plan is a marked improvement over the previous drafts, both in tone and content. RCRC continues, however, to have significant concerns with the draft Strategic Plan.

Co-Equal Goals

The Task Force has chosen to establish the Delta ecosystem and a reliable water supply for California as the primary, co-equal goals for sustainable management of the Delta. RCRC does not disagree with these goals. The “Delta-centric” nature of the Task Force’s recommendations is, however, of great concern. The Strategic Plan contains numerous statements relating to the co-equal goals similar to the following:

(Page 16, lines 18-20) *“As decisions about water flows, habitat investments and other requirements of the co-equal values are made.....”*

(Page 16, lines 30-31) *“5. Build new facilities for water conveyance and storage, and manage all facilities to achieve the co-equal goals.”*

(Page 19, line 17 and 32-33, 35-36) *“...achieving Delta flows to support the co-equal values”, “....meeting both of the co-equal values requires intensive management of two issues in particular – freshwater flows and water quality” and, “...improvement in freshwater flow conditions.”*

(Page 21, lines 7-9) *“Diversions from the Delta watershed – upstream, within, and exported from the Delta – are an issue of statewide importance because of their impact on the co-equal values.”*

The “Delta-centric” nature of the recommendations contained in the Strategic Plan is exactly why the Strategic Plan must specifically include adequate assurances that programs or facilities implemented or constructed in the Delta will not result in redirection of unmitigated significant impacts to upstream beneficial uses in the areas/counties/watersheds of origin. For example, revitalizing the Delta ecosystem should not come at the expense of equally important upstream ecosystems.

RCRC strongly agrees with the Department of Water Resource’s comments to the Task Force dated September 2 that “...governance reform has potentially significant implications aside from those intended for the Delta and those who rely upon the Delta. The likelihood for unintended impacts to other non-Delta water and resource management issues across the state needs to be better understood and any impacts must be taken into consideration for purposes of decision making.”

Area of Origin Assurances

The Strategic Plan proposes both new water storage and new/improved water conveyance, thus carrying forward the policies of state water development of which the County of Origin and Watershed of Origin statutes were integral parts. Express recognition and reiteration that the future needs for water in the counties and watersheds in which this water originates will not be jeopardized is as essential to contemporary water resources planning as it was to the original California Water Plan.

Please see RCRC’s comments to the Task Force dated November 9, 2007 on *A Vision for California’s Delta* for a more detailed discussion on this topic.

Governance

The Strategic Plan proposes a multi-part governance structure. While the Delta Operations Team and the California Water Utility are no longer contained in the draft, RCRC is still of the opinion that the Task Force has put forward an overly complex and costly governance structure. While RCRC appreciates that the fourth draft Strategic Plan now states that existing state agencies will retain their existing authorities, RCRC opposes the Task Force’s proposed governance structure.

The Strategic Plan proposes a new governance body, the California Delta Ecosystem and Water Council (Council) with extensive responsibilities and authorities. Among other things the Council would have the responsibility to adopt a California Delta Ecosystem Plan (CDEW Plan) to “...*achieve the goals of our Vision and this Strategic Plan.*” Additionally, the Strategic Plan proposes that the Council exercise its “authority” to determine consistency with the CDEW Plan when reviewing actions of state agencies, and to allocate funds consistent with the CDEW Plan. RCRC does not support the creation of the CDEW Plan, as proposed. Instead, the agencies responsible for implementing actions should be provided with clear direction by the Administration and the Legislature and the fiscal means to accomplish their charge.

The Strategic Plan calls for state agencies to be “required” in statute to exercise their authority to support implementation of the CDEW Plan. Enforcement of the Council’s dictates would include the ability of the Council to issue cease-and-desist orders or “sue” to ensure specific compliance. The Council would also hold the purse-strings and would reduce or terminate funding if federal, state, or local agencies conduct activities “...*that are*

inconsistent with the CDEW Plan.” RCRC believes that the proposed powers of the Council are overreaching. RCRC is in opposition to the creation of a Council with the proposed authority and powers.

As noted in RCRC’s September 2 comments, if a Council is to be created it should include representatives from the areas of origin, the Delta, water exporters, provide oversight, and be advisory in nature. To improve regulatory coordination in the Delta, RCRC agrees with the suggestion put forward by other stakeholders that this can best be accomplished through the creation of a new and adequately funded Division of Delta Resources within the State Water Board.

Unlike the creation of the proposed Council, there appears to be widespread agreement with the creation of a new Delta Conservancy to be responsible for the implementation and coordination of Delta ecosystem improvements. RCRC appreciates that the Strategic Plan calls for (Page 8, lines 37-39) *“...substantial local representation on its governing body and effective working relationships with local governments, land owners and other stakeholders.”* RCRC believes that a good model for the Delta Conservancy could be the Sierra Nevada Conservancy as it includes both local and federal representatives.

Strategic Plan Volume I Comments:

(Page 5, line 4) The Strategic Plan states that there is a growing demand for water *“...with little evidence of successful conservation at a state wide scale”*. RCRC does not believe this statement is true. This statement is also contradicted (Page 21, line1) by the statement *“California has made major strides in water use efficiency and conservation in recent decades...”*

(Page 7, lines 2-3) The Strategic Plan states that *“...large numbers of laws...appear to promise unrealistic amounts of water....”* The Task Force may want to note in this section of the Strategic Plan that the State Water Project (SWP) was never completed, thus the anticipated yield did not materialize.

(Page 7, Lines 15-16) The Strategic Plan states that *“mandatory conservation.....seems inevitable, and desirable.”* RCRC would suggest that voluntary conservation efforts should be encouraged and incentivized before mandatory requirements are assumed to be necessary.

(Page 7, lines 22-23) The Strategic Plan states that there should be *“...a clear legal limit to total water export placed in law.”* This recommendation is sure to attract significant opposition. As others have stated, the emphasis on adversarial approaches at the expense of collaborative implementation strategies will trigger years of litigation and political conflict.

(Page 8, lines 1-2) The Strategic Plan states that *“This recommendation that Californians really apply water rights laws may be the most far reaching recommendation made by this Task Force.”* This seems more than a bit of an overstatement.

(Page 16, lines 9-10) The Strategic Plan states that *“...these recommendations must be carried out together, with no “cherry picking” of ideas...”* The recommendations contained in the Task Force’s Delta Vision and Strategic Plan are just that – the Task Force’s work product or “independent” work product as has been often stated – it is not an agreement

reached collaboratively among the impacted stakeholders. Many of the recommendations contained in the Strategic Plan are controversial and/or are not well thought out, in part because of the time constraints the Task Force has labored under. RCRC will determine our position on any Task Force recommendations proposed to be implemented on a case by case basis.

(Page 20, lines 5-16) The Strategic Plan no longer includes recommended specific flow numbers. RCRC supports this change, and the acknowledgement that an analysis about the quantity of water and the effects of these flow recommendations will have on water supply reliability is needed.

(Page 20, lines 36-37) The Strategic Plan states “*Strategy 4.2: Increase regional self-sufficiency through diversifying water supply portfolios while not impacting flows into the Delta.*” (emphasis added) RCRC is still unclear as to the meaning of this statement. Clarification is again requested.

(Page 21, lines 12-13) The Strategic Plan calls for “*...linking state funding for water projects of all kinds to achievement of specific benchmarks on efficiency, conservation, and development of alternative supplies.*” RCRC urges the Task Force not make such a “blanket” statement. RCRC agrees with the statements found on that same page (lines 17-21) relating to decisions on investments must occur at the local and regional level.

(Page 22, line 28) RCRC appreciates the inclusion of “north” in addition to “south” as it relates to the need for locations to store water.

(Page 24, line13) The Strategic Plan states that “*...water delivery systems must now comply with species protection laws.*” (emphasis added) As RCRC does not believe that there has been any question as to whether the state’s water delivery systems have been/are subject to federal and state endangered species laws, we question why this statement is included in the document.

(Page 24, lines 34-36) RCRC appreciates that the Strategic Plan now acknowledges the role that private agreements, exchanges, etc. can play “*to reach accommodation to changed water availability.*” RCRC believes that collaborative efforts should be encouraged and adversarial approaches avoided.

(Page 25, lines 25-35) The Strategic Plan states that existing state agencies will retain their existing authorities. RCRC supports this change to the Strategic Plan.

(Page 28, lines 8-21) The Strategic Plan now contains a discussion on the uncertainties surrounding the (current and future) Delta ecosystem. This is an important point to make, and it is exactly why it is not appropriate to include specifics in the Strategic Plan that have little or no scientific basis.

(Page 32, line12-13) The Strategic Plan calls for the reporting of all diversions, including pre-1914 and riparian water users, and makes the statement that “*...reported use becomes the presumptive level of water use for public policy decisions until a better system is established.*” It is unclear to RCRC what this statement means. Clarification is requested.

Strategic Plan Volume 2 Comments

(Page 7, lines 37-44) The Strategic Plan appropriately recognizes that the “...*eventual total amounts and types of restoration needed can be determined only through implementationthat will identify when the goal and objectives have been achieved.*” RCRC understands that the Strategic Plan now identifies specific acreage numbers as “targets”, but RCRC continues to question why these specific acreage numbers for types of habitat to be created remain included in the Strategic Plan.

As the Task Force is aware, the Bay Delta Conservation Plan (BDCP), a joint state-federal-stakeholder effort is underway to develop a Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) for the Bay-Delta. RCRC believes that the HCP/NCCP is the more appropriate venue to develop habitat targets.

(Page 9, lines 33-38) The Strategic Plan proposes, where feasible, the development of floodplain habitats upstream along all the rivers and streams entering the Delta capable of supporting salmonid rearing and splittail reproduction. “Restored upstream habitat” is discussed on Page 15, and expanding and restoring floodplains upstream along the Mokelumne River and the San Joaquin River is targeted on Page 16. RCRC believes that any changes to upstream habitat and/or floodplains must be made in cooperation with local/regional interests. RCRC believes that the Strategic Plan should make a statement to this effect when making recommendations for actions to be undertaken outside of the Delta.

(Page 13, lines 38-39) The Strategic Plan, relating to restoration of tidal marsh and aquatic habit, states that “*Priority should be given to suitable lands owned or controlled by governments or nonprofit organizations.*” RCRC agrees that utilization of government and/or nonprofit owned land for habitat is preferable to the acquisition of privately held land.

(Page 16, lines 4-6) The Strategic Plan states “...*flow targets recommended here are based on the best available information and are for interim use until relevant agencies can develop and adopt flow targets through a comprehensive and transparent process.*” RCRC does not believe that that the Task Force has the expertise to make these recommendations. The State Water Board has the authority to determine flow requirements utilizing specific procedures to assure due process.

(Page 20, line 25-26) The Strategic Plan discusses the screening of diversions, including “...*upstream diversions that are appropriate for screening.*” The cost of screening upstream diversions, if determined to be necessary in order to protect threatened or endangered aquatic species, should not be borne solely by upstream diverters. Bond funds and/or shared funding by the water exporters would be appropriate.

(Page 21, lines 24-29) The Strategic Plan rightly acknowledges the role of the State Water Resources Control Board (State Water Board) in regulating flows. (Page 23-24) The Strategic Plan then proceeds, however, to tell the State Water Board that they “should” 1) revise the Bay-Delta Water Quality Control Plan to include new spring Delta outflows; 2) reintroduce fall outflow variability; 3) revise the Vernalis flow objectives and the export criteria for the CVP and SWP to provide for net positive San Joaquin River flows between February and June; and, 4) provide short-duration fall San Joaquin River pulse flows. Additionally, the Strategic Plan goes on to lay out flow specifics, and that states “*If desired benefits are not*

demonstrated, the standard should be revised by the SWRCB in consultation with the CDEW Council.” As previously stated, RCRC does not believe the Task Force has the expertise to make these recommendations. Any actions taken relating to flows must be made utilizing the State Water Board’s regulatory processes. RCRC does not support any role for the proposed Council in this regulatory process.

(Page 27, lines 6-7) The Strategic Plan states “*...if the costs of making the needed improvements falls on low-income residents and workers, this also represents an environmental justice concern.*” It is not clear if this statement is intended to address the increased costs potentially imposed upon small and disadvantaged communities upstream from the Delta as a result of the Task Force’s recommendations. If it is intended to address this concern RCRC appreciates the inclusion of this statement.

(Pages 27-28) The Strategic Plan proposes to require the Central Valley Regional Water Quality Control Board (Central Valley Water Board) to: 1) re-evaluate wastewater treatment plant discharges into Delta waterways and upstream rivers and set discharge requirements at levels that are fully protective of human health and meet ecosystem needs; 2) adopt a long-term program to regulate agricultural discharges; and, 3) adopt a plan to reduce or eliminate urban runoff impacts on Delta water quality. Similar to our comments relating to the State Water Board, the Central Valley Water Board is in a better position than the Task Force to determine what actions it should undertake to address Delta water quality.

(Page 29, lines 32-33) The Strategic Plan when discussing water use by agriculture states “*...but often they do not currently result in water savings available for other uses.*” As RCRC stated in our September 2 comments, agricultural water use efficiency should not be depended upon to result in water “for other uses”.

(Page 30, lines 33-34) The Strategic Plan suggests legislation targeting a 40% reduction in water use “*...especially in non-coastal areas...*” by 2050. The Strategic Plan should explain the rationale for this statement. Additionally, recognition needs to be given to the fact that a “one-size-fits-all” approach to water conservation is not workable. As noted in our September 2 comments to the Task Force, there should also be included in the Strategic Plan a discussion as to the implications of a reduction of such magnitude on outdoor water use.

(Page 31, lines 42-43) The Strategic Plan proposes to require counties who provide the regulatory oversight for individual agricultural groundwater users outside of recognized water districts to prepare and submit an Agricultural Water Management Plan (AWMP) to DWR every five years. The AWMP would include projected agricultural water demands, availability of supplies, and implementation of Efficient Water Management Practices. RCRC believes that requiring counties to undertake these tasks would be costly and labor intensive. If this recommendation is implemented funding to cover the cost to the county will be needed.

(Page 33, lines 4-5) The Strategic Plan proposes that regional self-sufficiency be increased through diversifying water supply portfolios “*...while not impacting flows into the Delta.*” Clarification as to the meaning of this statement is again requested.

(Page 34, lines 36-40) The Strategic Plan would require various entities, including counties, to ensure accurate and timely information is collected on all groundwater diversions in areas

upstream, within and that receive exports from the Delta watershed. This proposal is just one of many controversial proposals for legislation put forward by the Task Force that is likely to trigger political conflict.

(Page 35, lines 26-27) The Strategic Plan proposes to require DWR to “...*promote concepts such as rotational following...*” as a water transfer tool. RCRC does not support the concept of rotational following as a means to make water available for transfer.

(Page 37, lines 29-32) The Strategic Plan, when discussing “dual conveyance” states “...*recognizing the need to equitably control decisions about how much water flows through a “canal” and provide assurances, such as being operated consistent with the proposed California Delta Ecosystem and Water Plan.*” (Page 38, lines 17-18) The Strategic Plan calls for “...*a decision regarding the size and location of new storage and conveyance facilities...*” by the end of 2010. Please see RCRC’s previous comments on the necessity for area/county/watershed assurances as it relates to new and/or improved water storage and conveyance facilities.

(Page 38, lines 40-43) The Strategic Plan states that 15 percent of the capacity of the conveyance will to dedicated to the Delta Conservancy to allow additional management of flows and diversions and paid for by public funds. RCRC will not comment on this provision as we understand that the inclusion of this language was unintended and that it will be deleted from the next version of the document.

(Page 39, lines 17-24) The Strategic Plan states that “*Desired flexibility in the management of upstream surface diversions will require greater ability to shift from surface diversion and delivery systems to groundwater extraction and delivery systems under different hydrologic and ecologic conditions.*” This is a blanket statement that does not recognize that not all upstream areas have the ability to store water underground. For example, groundwater quantity, quality, and usage vary considerably due to the small and unpredictable yields of the fractured granite formations that constitute much of the Sierra Nevada foothills and the western slope of the mountains. RCRC appreciates the recognition that “...*the cost of diversion management should not be borne solely by upstream diverters.*”

(Page 63, lines 1-5) The Strategic Plan states that the State Water Board should identify any inconsistencies between its Water Quality Control Plans and the CDEW Plan and develop a plan to address those inconsistencies or inform the Council in writing of why it cannot address the inconsistencies. This again highlights the fatal flaw with the governance structure proposed - the Council, its proposed overreaching authority, and its Delta-centric co-equal goals. As noted in RCRC’s July 23 comments, the State Water Board has been delegated the authority to implement the federal Clean Water Act and California water rights and water quality law. The State Water Board is a more objective and neutral body than the proposed Council as the Council’s highest purpose is to ensure that the primary “co-equal goals” are implemented. The State Water Board must rightly take a broader statewide view and not be constrained by the Task Force’s Delta-centric focus. This is what the Director of Fish and Game attempted to explain to the Task Force at the September Task Force meeting in the discussion dealing with the responsibility of trustee agencies and the fact that one cannot bifurcate the responsibility.

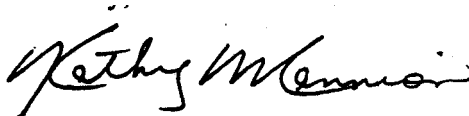
(Pages 65-69) RCRC has previously submitted comments on the issue of financing. As noted in RCRC's July 23 comments to the Task Force it is unclear how water diverters upstream of the Delta will benefit from implementation of the proposed CDEW Plan. Additionally, exporters of water from the Delta are likely to question why they should pay a per-acre fee on any water conveyed through or around the Delta in addition to paying for the costs related to conveyance.

(Page 66, lines 4-5) The Strategic Plan states that *"No public payment for water required for ecosystem revitalization is anticipated in this finance plan; the legal and fiscal arguments against such inclusion are persuasive."* This statement apparently replaces the statement *"water required to revitalize the ecosystem will not be purchased, but will be provided within the state's water rights system by exercising the constitutional principles of reasonable use and public trust."* RCRC would suggest that the legal and fiscal arguments referred to be detailed in the document.

(Page 66, lines 7-13) The Strategic Plan proposes to withhold state funding unless there is a demonstration of full compliance with, among other things, all applicable water quality regulations. As noted in RCRC's July 23 comments, RCRC has grave concerns with this language as written. RCRC noted in our comments, as an example, the impact this provision could have on the small and/or disadvantaged communities throughout the state that are on failing septic systems or have old and undersized wastewater treatment plants that cannot meet current water quality standards. RCRC would hope that it is not the intent of the Task Force to recommend the denial of state funding desperately needed to, for example, bring small and/or disadvantaged communities into compliance with water quality standards.

In conclusion, RCRC appreciates the opportunity to once again submit comments to the Task Force. Please see RCRC's comments dated November 9, 2007; July 23, 2008, and September 2, 2008 for additional information/commentary not necessarily repeated in this submittal.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Mannion". The signature is fluid and cursive, with the first name "Kathy" being more prominent than the last name "Mannion".

Kathy Mannion
Director of Water and Power

cc: Governor Arnold Schwarzenegger
Members, Delta Vision Blue Ribbon Task Force
Members, Delta Vision Committee
Members, State Water Resources Control Board
Director Lester Snow, Department of Water Resources